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INTERNATIONAL ORGANIZATION: CONSTITUTION OF A LEGISLATIVE BODY.*

SUCH international legislation as has been attempted in the past has been accomplished through conferences or congresses wherein each nation present has been entitled to an equal voice, and every measure passed has been subject to the veto of any State taking part therein. Except as to trivial matters, the principle of majority rule has never been recognized. The sense of national sovereignty and independence has been too strong to admit of imposing an important restriction upon any State without its full and free assent.

It has followed, therefore, as it always must under such conditions, that these conferences have been able to pass but few important or complex measures. Nor will they be able to accomplish more in the future unless the right of national veto of international legislation be qualified, or substituted by some form of majority rule binding upon all—in other words, unless the international conference, as at present recognized, be converted into a true legislative body.

I shall assume, therefore, for the purposes of this discussion at least, that the nations are willing to surrender their sovereignty and independence to an extent necessary to allow the proper action of a majority in some form to bind each individually, *provided* their safety and necessary independence be sufficiently safeguarded.

*An address delivered before the American Society of International Law, at its annual meeting in Washington, D. C., April 27, 1917.

How then, may an international legislative body be organized so as to permit measures to be passed by a majority vote, and yet preserve the essential safety and independence of each component State?

In the intercourse of nations the two predominant principles are: first, the equality that exists between them in respect of sovereignty and dignity; and second, the inequality that exists between them in respect of actual influence in human affairs, arising from differences of population, wealth, commerce, military strength, and the development of the arts and sciences.

A great nation, like Russia or France, might willingly recognize in theory the equality of a small one, like Montenegro, in point of sovereignty and dignity, and yet be very unwilling to recognize it as an equal in point of influence in international affairs.

Provision, therefore, must be made in the organization of our legislative body to prevent the possibility that a majority of small States may override the will of a minority of the more influential nations.

Nor would the small States, jealous of their equality in sovereignty and independence, ever consent to enter an organization which would be definitely controlled by a preponderating minority composed of the influential States or Great Powers.

Were each nation given an equal vote in the legislative body by virtue of equal sovereignty, we could not expect the Great Powers to consent to be bound by a majority vote, which might suffice to override their combined will, reducing them in importance to the level of small States.

On the other hand, were each nation given a voice in proportion to population or wealth or commerce, the Great Powers would easily predominate in the international council over the combined votes of the smaller States, which might justly believe that such a plan would commit the lamb to the wolf.

But is it not practicable so to combine these two antagonistic principles in the organization of our international conference as to overcome this difficulty? If each of these predominant influences in international affairs were given a veto upon the action of the other, so that no measure could be enacted into law

without the assent of both, might not the nations then see their way to entrust to the conference true legislative functions?

This might be accomplished by organizing the conference into two chambers or houses, a majority vote in each being necessary to enact legislation—the one, representing equal sovereignty, in which the component States of the league would, like the States of our own Union, have an equal voice, regardless of the actual influence of each; the other in which the component States would each possess a voice commensurate with its influence in international affairs, as measured by its population, wealth or commerce.

While such an organization would present certain advantages, it involves too many complex problems to be discussed in a paper of the present scope. I shall content myself with presenting to your consideration a simpler plan, though based upon the same essential principles.

Taking the international conference as it exists today, the same results substantially might be secured should the nations agree that every measure presented to that body, in order to become a law binding upon all, must pass the conference twice by majorities based respectively upon the two principles already mentioned: that is, passed first by a majority of all the States, each State casting an equal vote, and then passed a second time by a majority of the States, represented this time not equally according to sovereignty, but unequally according to influence, as measured by population or wealth or commerce or some other quality.

The first passage would insure that no measure be adopted without the consent of the majority of all the States, while the second passage would insure that it be not adopted without the consent of a majority of the more influential States. Should the measures pass both times, it would have the assent both of a majority of all and of a majority of the Great Powers, and would ordinarily become a law binding upon all.

But two important questions would remain to be considered. The first is, what guarantee can be offered to the States (or perhaps a single State), voting in the minority upon both passages of a measure, that the reserved rights of sovereignty and inde-

pendence may not be invaded by measures so passed? The second is, what form should the representation of the States in the conference assume when based on their respective influence in international affairs? Should they be represented according to their several populations, wealth, commerce, strength or their development of the arts and sciences, or a combination of some or all of these?

First, as to the guarantee that may be afforded to a minority of States, upon the passage of any measure, that their reserved rights shall not be infringed thereby.

It would, of course, be impracticable to allow to each nation an absolute veto power upon any and every measure proposed to the legislative body. That would be to destroy its legislative character, and to reduce it once more to the inefficient condition of the present international conference, from which we are seeking to escape.

But this is not to say that in no event ought a single nation or a minority group of nations to exercise the right of veto. If, in the judgment of any nation, the legislative body is exceeding the powers granted to it, or is dealing with matters not confided to its guardianship, so that the sovereignty, independence or safety of the nation is deemed to be threatened, it would seem that such nation ought to have the power, under reasonable conditions of notice and time, to veto the measure, in which event it would not become a law merely by virtue of its passage by the prescribed dual majority of the conference.

This situation at once suggests the question whether such a veto ought to put an absolute stop to the passage of the proposed law, or whether a right should be vested in the conference to override the veto by a large majority of the conference—say three-fourths of the votes taken in each of the two ways above indicated.

While it would seem reasonable to permit one or more States thus to veto and hold up a measure which in their judgments would, if passed, constitute a usurpation of legislative authority and an infringement of the reserved sovereign rights of the nations comprising the league, yet, on the other hand, it would appear equally as reasonable to provide that if so large a major-

ity as three-fourths of the component nations of the league, measured both by numbers and by influence, should take the opposite view, their interpretation of the fundamental agreement on which the league would be based is more likely to be correct than that of at most, one-fourth of the component States, especially in view of the fact that the three-fourths must be presumed to have as great an interest in preserving inviolate their reserved rights of sovereignty and independence as would the dissenters.

Thus, while the veto power of one or more States would constitute a valuable check upon the reckless or oppressive action of *bare* majorities in the conference, there would be established a countercheck upon the reckless or oppressive exercise of the veto by one or a few States through the right of the conference to overcome such a veto by the action of *large* majorities.

Of course, reasonable limits should be imposed with respect to the time within which a State might invoke its veto power, and it should be required to give reasonable notice of its intentions in that regard.

To illustrate the operation of the plan here suggested, let us suppose a measure introduced in the international conference by a representative of one of the component nations.

In order to become a law, it must first have received a majority of the votes of the conference, each State casting an equal vote, regardless of size, population or influence. Passed by such a majority, it must then have received a majority of the votes of the conference, each State casting a vote proportioned to its influence, as measured by some guage yet to be determined, such as population, wealth, resources or commerce.

If no objection were raised to the measure on what we may call "constitutional" grounds, that is, because it exceeds the legislative powers conferred upon the conference by the basic agreement of the league, the passage of the measure as above indicated would suffice to make it a law.

But if any State were to raise "constitutional" objections to the passage of the measure by either majority, it might, within a reasonable time after the final passage (say, within thirty days) give notice that it is considering the veto of the measure.

In the absence of such notice, the measure would become a law after thirty days, unless a different date were fixed for its operation.

If notice of an intent to veto has been duly given and within a further reasonable time (say, one year from the final passage) no veto is forthcoming, the measure would become a law.

If within the year the act is vetoed by one or more States, it would fail to become a law, but might be taken up by the conference for reconsideration. If the measure should then receive a large (say, a three-fourths) majority of the votes of the States, voting first equally, and then in proportion to influence, it would become a law, notwithstanding the veto. Should it fail to receive the required majority upon either vote in the conference, it would not become a law.

The next question is a difficult and complex one.

If, in order to transform the present international conference into a true legislative body, it be found necessary to provide that each measure presented to it shall pass by two distinct majorities, one consisting of the States voting equally, the other of the States voting unequally in proportion to the influence of each in world affairs, we are confronted with the question, what should be the measure of that influence? Should it be found in the population, the wealth, resources, military strength, commerce, or the state of civilization and of the arts and sciences, pertaining to each State, or in a combination of some or all of these?

Reflection, I think, will show that the populations of the several States (with certain qualifications presently to be noted) furnish upon the whole, the best measure of the world influence of each State, for all the others suggested are in general dependent upon, or bear a close relation to, population—potentially, at least, if not actually.

This proposition would be almost as evident as a demonstration of Euclid, could we suppose the populations of all the nations of the world to be homogeneous. Upon the theoretical assumption that the population of every State is composed of homogeneous material—made up of persons of like character, abilities, education, ideals and standards of civilization—it

would be manifest that the number of such persons in each State would go very far to determine its wealth, commerce, military strength and all the other elements constituting its importance in international affairs. Its population would be the permanent and essential measure of its influence, the other qualities mere incidents.

Practically and actually, however, conditions are quite different from that theoretical status of homogeneity of populations above assumed. Almost all of the great nations of the world, as well as some of the smaller, claim the allegiance of enormous masses of backward peoples, whose united forces of ignorance, superstition and weakness add proportionately little to the general world influence of the States to which they belong.

Any estimate of the comparative values of European and backward peoples must be more or less arbitrary, differing indeed with the various degrees of backwardness. The value of the Hindoo or the Chinaman would be decidedly greater than that of the negro of Africa, and yet they must all be classed as backward peoples, for the political purposes of this discussion.

In view of the fact that in the larger aspect the progressive races are white, while the backward races are colored, it would seem that a reasonable solution of the problem might be found by classifying the populations of all the nations composing the league into white and colored (or mixed), and by assuming that, for the purpose of determining the international influence of each State, the white inhabitants shall each be counted as equivalent, on the average, to (say) three colored persons.

For example, the population of the British Empire amounted in 1913, to about 396,000,000, of whom about four-fifths were Hindoos, Australasians or negroes, and perhaps 63,000,000 were Anglo-Saxons or Europeans. Surely the 63,000,000 of Europeans ought to be counted as of greater value to the Empire, man for man, than the 333,000,000 of backward peoples. While the latter increase materially the power, prestige, wealth, commerce, and general influence of the Empire, the increase is far from what it would be if those people were Anglo-Saxons.

Assuming tentatively, that the ratio above suggested, of one person of the white or progressive races, to three of the colored

or backward races, is a just ratio, the vote of the British Empire in the international conference, so far as that vote would be based not on equality of sovereignty, but on influence in international affairs, would be measured not in accordance with its total population of 396,000,000 souls, but in accordance with what we may call its "representative population," estimated by adding to the total number of white persons within its limits, one-third of all other persons. Thus, to the 63,000,000 of Anglo-Saxons in the British Empire, there would be added not 333,000,000, but one-third of that number, or 111,000,000, aggregating 174,000,000, which would constitute that empire's "representative population."

But to this general rule there would be two exceptions that must probably be recognized.

The first of these exceptions is the Japanese Empire. Japan is one of the Great Powers; her citizens have shown themselves as alert and progressive as Europeans or Americans. She ought to be admitted into the international council on the same basis as if her population were of the white race.

The second exception is the Chinese Republic, with its wholly colored population of 420,000,000. Even if only one-third of this immense number were taken as constituting its "representative population," this would amount to 142,000,000—not far below that of the British Empire, about the same as that of Russia, and more than twice as great as that of France, or that of Japan, or Germany.

It is inconceivable that the Great Powers of the world would permit to China a voice in the international council greater than their own. Her vast size, population and resources, taken in connection with the backwardness of her civilization and commerce, would constitute her an exception to almost any rule of representation in the international conference that might be suggested. The probability is that she must be treated as in a class alone, and admitted to the league upon special conditions as to the representation and influence to which she shall be entitled.

These two exceptions noted, the general rule above suggested for determining the "representative population" of each State could be followed without much difficulty.

Using in all the following cases the figures of 1913, the year preceding the European war, the British Empire, as has been shown, would have a "representative population" of 174,000,000.

The French Republic possessed within all its territories a population of some 92,000,000 persons, of whom about 40,000,000 were white, and 52,000,000 colored, one-third of whom, or 18,000,000, would be added to the 40,000,000 whites, to constitute its "representative population," which would aggregate about 58,000,000.

The population of Russia totaled 160,000,000 persons, of whom perhaps 30,000,000 would be colored, so that her "representative population" would approximate 140,000,000.

Treating the Japanese for the purposes of this discussion as a "white" race, her "representative population" would coincide with her total population, and would amount to 54,000,000. If Korea, with 15,000,000 of colored population be added, the "representative population" of the Japanese Empire would reach 59,000,000.

Italy within all her territories possessed a population of 32,000,000 white, and 6,000,000 colored, so that her "representative population" would be 34,000,000.

The population of Germany in Europe was 65,000,000, while that of her African possessions was 15,000,000. Hence, her "representative population" would approximate 70,000,000.

Austria-Hungary possessed a total population of about 50,000,000 persons, all of whom practically were white, so that the total numbers and the "representative" numbers would coincide.

The United States possessed a population of some 84,000,000 white, and 20,000,000 colored (including amongst the colored the American negroes and natives of the Philippine Islands and Hawaii). Their "representative population" therefore, would approximate 91,000,000.

The Netherlands possessed a white population of about 7,000,000, and a colored population in the colonies of some 34,000,000, making the "representative population" about 18,000,000.

Portugal's white population was about 6,000,000, with a col-

ored population of some 9,000,000. Her "representative" numbers would thus reach about 9,000,000.

Belgium's white population amounted to 7,000,000, while the colored population of her colonies appears to have been some 15,000,000, so that her "representative population" would reach about 12,000,000.

None of the other European nations has any colored population worthy of mention, so that we may assume the "representative populations" of all of them to coincide with their totals. Among these Spain should be noted, with a population of 20,000,000.

Passing to the States in America other than the United States, we are once more confronted to no small extent with the problem of colored or mixed races. In Haiti and San Domingo the people are practically all negroes. In Mexico, Brazil, Chile, Peru, and other of these countries, large portions of the populations are Indian or of mixed race. Statistics are not at hand to show what proportions of these populations are respectively white and colored or mixed, so that their "representative populations" cannot be here given, even if space permitted.

Having ascertained the "representative population" of each member of the league, and thus ascertained its relative influence in international affairs, it would only remain to fix upon a ratio of representation in proportion to that population.

For purposes of illustration, let us assume a ratio of one vote for each 4,000,000 of "representative population" or fraction thereof. Referring to the "representative populations" of the several States already estimated, the British Empire, upon the second passage of any measure in the international conference, would then be entitled to 44 votes; Russia, to 35 votes; France, to 15 votes; Austria-Hungary, to 13; Italy, to 9; Germany, to 18; the Japanese Empire, to 15; the United States, to 23; the Netherlands, to 5; Portugal, to 3; Belgium, to 3; Spain, to 5; and China (an exception to all rules), to such votes as might be agreed upon.

To summarize briefly the suggestions here made:

The conference or congress of the international organization would be empowered to enact legislation of certain speci-

fied kinds and upon certain specified subjects, so that the legislation shall be binding upon the nations that are members of the organization, with certain limitations and qualifications as follows:

1. A measure, before it becomes a law, must pass the conference twice by a majority of the votes thereof as hereafter described.

2. At the first passage each constituent State, regardless of population, size or importance, shall be entitled to an equal voice with every other State.

3. At the second passage each State shall have a vote proportionate to its "representative," not its total, population, which is to be estimated (except in the case of Japan and China) by adding to the number of its white population a certain proportion (say, one-third) of its colored or mixed population.

4. Japan should be treated as if the Japanese were of white race; China, according to special agreement.

5. A measure, when passed twice by the conference as above described, unless vetoed by one of the constituent States within a prescribed period, shall become a law binding upon all members of the organization.

6. Any constituent State shall have the right, within the period prescribed, to veto the measure upon the ground that it exceeds the legislative powers conferred upon the conference, or otherwise violates the fundamental agreement upon which the organization is based.

7. In the event of such veto, the measure shall not become a law unless the veto be overcome by a designated large majority (say, three-fourths) of the conference upon two votes taken as already indicated.

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